

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act of)	
1996)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	

COMMENTS OF
LOUIS F. McALISTER, PRESIDENT
NAVIGATOR TELECOMMUNICATIONS, LLC.

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COMMENTS OF LOUIS F. McALISTER, PRESIDENT,
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Navigator Telecommunications, LLC. (“Navigator”) is an Arkansas-based competitive provider of telecommunications services to residential and business customers primarily in the South, Midwest, and Southeast, in states served by Southwestern Bell (SWBT), Ameritech, and BellSouth. Navigator offers local and long distance telecommunication services to residential and business customers. From its beginning, Navigator has sought to provide quality telecommunications services at competitive prices to both residential and business customers in its service areas, and remains committed to that goal.

In the NPRM, the Commission indicated its intention “to build on the experience of all participants in the telecommunications industry with our existing rules.” (¶ 47, FCC 01-361). The Commission should be fully and accurately informed about the experiences of small competitors like Navigator. As a small company with limited resources, Navigator cannot offer a comprehensive response to all of the issues in this proceeding. Instead, it offers these comments based on real-world experiences from daily operations.

A CLEC like Navigator daily faces a seemingly unending series of obstacles in dealing with ILECs. Competition suffers, because consumers suffer a loss of choices along with the pricing benefits competition brings.

Navigator implemented a strategy of using total service resale with a transition to UNE-P, seeking to establish a customer base that could eventually allow implementation of Navigator’s own facilities. Now in its fifth year of operations, Navigator is just beginning to overcome a few of the obstacles and roadblocks created by the ILECs, and within only the last six months

has begun to see the fruits of its efforts to bring quality service and choices to consumers at a profit.

The Act has been in effect for 6 years, but only within the last several months have we begun to see the possibility of true competition because of delays in implementation of the Act. While there have been a variety of causes for those delays by far the greatest obstacles are those intentionally created by the ILECs. Things are just now beginning to change a little bit.

CLECs have had to arbitrate and litigate for the opportunities that were provided by the Act but never implemented or allowed by the ILECs without a fight. In this war of attrition, many companies did not survive. ILEC strategy focused on gouging CLECs with unreasonable and unjustifiable pricing, delaying implementation as long as possible, stonewalling on disputes and dragging out resolution proceedings, in the hope that CLECs would shrivel up and go away. This has proven to be an all too successful strategy. The competitive telecommunications market has been decimated, capital has dried up, consumers have been left empty-handed, and the promises of the Act have been left unfulfilled. However, with dust still settling on some of the hard-fought battles to wrest UNE-P provisioning at realistic prices from the ILECs, CLECs and consumers are just now beginning to realize some of the promises of the Act.

In the UNE Remand Order, the Commission assumed that “three years is generally sufficient time for competitors to implement their plans.” This assumption may be true. But the practical application of that Order has only been in effect in selected areas for less than one year. ILEC delay has frustrated implementation of CLEC business plans and diverted time and resources to protracted disputes and regulatory proceedings.

State commissions are in the forefront of holding ILECs to the requirements of the Act. Recent actions by various state commissions have finally begun to allow CLECs to overcome

some of the obstacles raised by the ILECs with regard to UNE-P. An example is the recent decision by the Public Utilities Commission of Ohio reducing from \$80.86 to \$0.74 the amount of NRCs that Ameritech could charge for migration of an existing customer to UNE-P. (PUCO, Opinion and Order, Case No. 96-922-TP-UNC, Oct.4, 2001).

Navigator has a dispute with SWBT over the costs of UNE-P in Arkansas currently pending before the Arkansas Public Service Commission. SWBT has taken the position that Navigator cannot migrate an existing Navigator customer from total service resale to UNE-P without paying more than \$200 per line in nonrecurring charges. This dispute, as yet unresolved despite Navigator's attempts for the last eighteen months to do so, has severely impacted Navigator's ability to aggressively pursue residential business in Arkansas, reach profitability, and attract new capital. Similarly, another pending dispute before the Texas Public Service Commission arose out of SWBT's delays in deploying UNE-P based services in that state, and the resulting impairment of Navigator to compete.

For CLECs like Navigator, these struggles continue state by state, ILEC by ILEC, in a seemingly never ending delay of disputes and proceedings. These actions by the ILECs serve to divert the limited resources of small competitors and effectively deny competitive choice to consumers. In effect, the ILECs have smothered competition before it has had a chance to thrive.

It is tempting to attribute the ILECs thwarting of competition to deliberate and intentional conduct. However, it is also clear to a company like Navigator that a large part of the problems with the ILECs are systemic. A company like Navigator has to fight the same fights over and over with different departments within the same ILEC. Billing does not know what Operations is doing; Regulatory does not know what Legal is doing; and a CLEC like Navigator spends

precious resources and time in duplicative rounds of ILEC bureaucracy. Indeed, no ILEC with whom Navigator does business has ever been able to render one correct bill in over four years. As soon as an issue or problem is resolved on one front with one group, the issue is resurrected by another group. Or, even more frustrating, by the time Navigator establishes communication and working relationships to facilitate order processing, etc. with one set of ILEC employees and representatives, the ILEC changes their whole organizational scheme, and Navigator inherits a new set of ILEC personnel trying to implement a different scheme. Another continuing problem is lack of parity. Just this week, a SWBT technician told a Navigator customer that if the customer were with SWBT, “their new lines would already be installed”, but because they were using Navigator, the installation was being delayed because of “lack of facilities”. Yet Navigator uses SWBT facilities, technicians and resources – the same resources that SWBT uses for its retail customers.

The practical effect of the ILECs’ inefficiency is just as devastating to competition as deliberate anti-competitive action. If a Navigator customer (or potential customer) is denied service, or if their service is delayed, or doesn’t work, because SWBT hasn’t complied with the Act, the interconnection agreement, or hasn’t followed their own ordering process and procedures, it doesn’t really make much difference whether SWBT’s action were intentional or just incompetent – Navigator loses the customer, and more than likely, SWBT gains the customer. Navigator, and the entire competitive community, also gets the black eye.

Despite these continuing problems, and despite the delays in implementation, UNE-P is starting to be made available to CLECs through the actions of state commissions and regulatory bodies, and provides the framework for successful competition by companies like Navigator. Through UNE-P based provisioning, Navigator anticipates continued growth in line count,

customer base, and revenues. UNE-P is just now beginning to provide the opportunities for competition, and provides the only financially viable option for a company like Navigator.

The argument that competition prevents ILECs from deploying technology rings hollow. All costs are predicated on a model that allows the ILECs to make a "profit" on their sale to CLECs. CLECs represent "avoided costs" for the ILECs. i.e., we absorb the marketing, sales, billing, and servicing costs. We absorb the bad debt. CLECs have such a small percentage of the total number of lines that there is no impact on technology deployment for the ILECs. Providing UNE-P is profitable for the ILECs, and allows for recovery of the costs of recently built facilities. Especially now that ILECs are being rewarded with Section 271 relief and are reaping additional profits from participation in the long-distance markets, arguments that competition handicaps their ability to implement new technology remain unconvincing. That same argument was made long ago before the divestiture of the Bell System. The evidence, though, is that the break-up of the giant telecom monopoly actually unleashed a technology surge in this country. The RBOCs also raise the specter of lost jobs because of competition. They fail to mention the decade-long campaign they have waged to cut jobs at every turn and opportunity. Seven companies have become three, and hundreds of thousands of jobs have been cut. Furthermore, the failure to allow competition has, by some estimates, cost this industry 500,000 jobs in the last two years.

If true competition exists for local access consumers, which drives prices to their lowest point (i.e., the market is rationalized), then who will pay the cost for the ILECs (or any other interested market entrant) to enter other lines of business such as broadband? The answer for all other companies is that their investors are expected to pay those costs, take those risks, and make those decisions based upon how well they can attract subscribers, provide service, and manage a

sustainable business model. The answer for the ILECs is that they want the Federal Government to protect them, carve out a competition-free, risk-free, pain-free niche for them, and make their current subscribers pay the bill through cross-subsidies and limited choice.

The focus should be on what consumers will have available to them regardless of the technology involved. The actual deployment of technology may be best handled through a limited number of developers/builders. But that foundation technology does not imply or dictate that the interests of consumers are best served by that same limited number of builders.

To encourage competition, the Commission should discourage the ILEC actions that have violated the letter and intent of the Act and frustrated its purposes by stifling competition. The economic incentive for not complying with the law must be removed. The rewards for malfeasance must be stopped. Regulators can no longer turn a blind eye to ILEC abuses and anti-competitive behavior. More drastic steps must be taken. The public will be served, not by limiting availability of UNEs, but by stopping ILEC abuses.

Providing an alternative to consumers. That has been and continues to be our goal. Navigator believes that pursuant to the Act, this can be done to allow the ILEC a profit, the CLEC a profit, and the consumer a choice at a competitive price.

The continued availability of UNEs and specifically UNE-P is vital to the continued existence and growth of CLECs like Navigator. UNE-P provides the toehold necessary for a small company to begin to build a customer base and generate revenues necessary to provide a competitive alternative to residential customers in Arkansas and elsewhere. There are no viable alternative facilities providers for Navigator in any of its service areas. ILECs should be required to provide cost-based access to UNEs and UNE-P. Through the efforts of competitors and the actions of state commissions, that has begun to happen.

Limits on UNE availability are premature. Any proposed limits based on temporal or other triggers would be totally speculative at this point. Service specific or geographic limits at this time are unnecessary and would be unduly burdensome from an administrative and regulatory standpoint. Before limitations can be considered, competition must be given a meaningful opportunity to take root. That has not yet happened.

As the Commission noted in the UNE Remand Order, the record before us does not “provide a basis for making predictive judgments about when an unbundling standard will no longer be met.” However, the record of the last five years shows us the lengths to which the ILECs will go to frustrate the goals of the Act. It also shows us that determined, well-managed competitors, given a fair opportunity under existing laws and rules, can survive and grow. Currently, competitive providers like Navigator stand on the verge of being able to finally pursue and conduct the business that we have been fighting for. The playing field is starting to level out, and competitors are rearing to get in the game, with an opportunity to compete fairly. Now is not the time to rewrite the rules in favor of the ILECs.

At a minimum, the Commission should require the ILECs to continue the current unbundling requirements, not relieve the ILECs of those requirements as a reward for their stifling, anti-competitive behavior. A “sunset period” would only provide incentive for the ILECs to continue their stalling tactics, knowing that the expiration date for viable competition was in sight. Restrictions on unbundling requirements will eliminate any meaningful opportunity for competition.

As Navigator has attempted to illustrate by way of these comments, real competition, especially for residential customers in rural and other suburban areas, has been nonexistent until just the last few months. Although Navigator has made valiant efforts to provide such service,

and remains tenaciously determined to provide consumers a choice, Navigator's ability to compete has been limited by the actions of ILECs, especially SWBT. The Commission need not rely solely on the hundreds of thousands of pages of documents submitted by the ILECs and their lobbyists in this proceeding, but should also consider the voices of those small CLECs, like Navigator, and the glimpse they provide beyond the smoke and mirrors of the ILECs' presentation. The competition-killing actions of ILECs are systemic and systematic. Navigator respectfully requests that the Commission continue to require unbundling and enforce its rules to address the problems that have effectively denied consumers the benefits of true competition.

Respectfully submitted,

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